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Attorneys for Plaintiff  
UNITED STATES OF AMERICA

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF HAWAII

UNITED STATES OF AMERICA,	)	CIVIL. NO. 03-00571 SPK LEK
	)	
Plaintiff,	)	<u>EX PARTE</u> MOTION TO SHORTEN
	)	TIME FOR HEARING ON UNITED
vs.	)	STATES' MOTION TO STRIKE
	)	CLAIMANT MICHAEL ELLIOT'S
SIXTEEN THOUSAND NINE HUNDRED	)	CLAIM AND ANSWER; DECLARATION
DOLLARS (\$16,900.00) IN UNITED	)	OF RACHEL S. MORIYAMA
STATES CURRENCY; ONE THOUSAND	)	
SIX HUNDRED DOLLARS	)	
(\$1,600.00) IN UNITED STATES	)	
CURRENCY; AND ONE WHITE 2003	)	
NISSAN XTERRA BEARING HAWAII	)	
LICENSE PLATE NUMBER NBJ748	)	
AND VEHICLE IDENTIFICATION	)	
NUMBER 5N1ED28Y23C642072,	)	
	)	
Defendants.	)	
	)	
BASHO ELLIOT, MICHAEL ELLIOT,	)	
and LIANE RENEE CURTISS,	)	
	)	
Claimants.	)	
	)	

EX PARTE MOTION TO SHORTEN TIME FOR  
HEARING ON UNITED STATES' MOTION TO  
STRIKE CLAIMANT MICHAEL ELLIOT'S CLAIM AND ANSWER

The United States of America, by its undersigned  
attorneys, files this ex parte motion to shorten time for hearing

so that its Motion To Strike Claimant Michael Elliot's Claim and Answer may be decided as quickly as possible in order to reduce the number of claimants, and thereby simplify the case by narrowing the scope of discovery and reducing the number of issues needed to be resolved by motion or trial.

As Claimant Michael Elliot and his attorney were notified of the United States' intention to file the Motion to Strike Claimant Michael Elliot's Claim and Answer during the Status Conference held on April 14, 2008, the United States respectfully requests that the Court set the earliest possible hearing date for, and deadline for Claimant Michael Elliot to file any written objection to, the Motion to Strike Claimant Michael Elliot's Claim and Answer.

Notice of this ex parte motion shall be provided to Claimant Michael Elliot and his attorney of record.

This motion is brought to avoid unnecessary delay and expense by reducing the number of claimants and simplifying the case and is based on the attached declaration and the files and records in this case.

DATED: May 9, 2008, at Honolulu, Hawaii.

EDWARD H. KUBO, JR.  
United States Attorney  
District of Hawaii

By /s/ Rachel S. Moriyama  
RACHEL S. MORIYAMA  
Assistant U.S. Attorney

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF HAWAII

UNITED STATES OF AMERICA,	)	CIVIL. NO. 03-00571 SPK LEK
	)	
Plaintiff,	)	DECLARATION OF RACHEL S.
	)	MORIYAMA
vs.	)	
	)	
SIXTEEN THOUSAND NINE HUNDRED	)	
DOLLARS (\$16,900.00) IN UNITED	)	
STATES CURRENCY; ONE THOUSAND	)	
SIX HUNDRED DOLLARS	)	
(\$1,600.00) IN UNITED STATES	)	
CURRENCY; AND ONE WHITE 2003	)	
NISSAN XTERRA BEARING HAWAII	)	
LICENSE PLATE NUMBER NBJ748	)	
AND VEHICLE IDENTIFICATION	)	
NUMBER 5N1ED28Y23C642072,	)	
	)	
Defendants.	)	
	)	
_____	)	
BASHO ELLIOT, MICHAEL ELLIOT,	)	
and LIANE RENEE CURTISS,	)	
	)	
Claimants.	)	
_____	)	

DECLARATION OF RACHEL S. MORIYAMA

I, Rachel S. Moriyama, declare and say:

1. I am an Assistant United States Attorney for the District of Hawaii, and I am the attorney representing the United States in the above-entitled action. I have personal knowledge of the facts set out herein, and I am authorized to make this declaration.

2. By stipulation and order dated May 4, 2005, this civil forfeiture action was stayed pending the resolution of the related criminal case, United States v. Basho Elliot, et al., Cr.

No. 03-00244 SOM (hereinafter the "Criminal Case"). Following a mistrial and an interlocutory appeal in the Criminal Case, Basho Elliot was convicted by a jury on the two counts in the First Superseding Indictment on March 12, 2007, and Judgment was entered against him on June 29, 2007. As a result of Basho Elliot's conviction, the stay in this civil forfeiture case was lifted by minute order dated July 23, 2007.

3. At a Status Conference held in this case on April 14, 2008, before the Honorable Leslie E. Kobayashi, government counsel advised the Court that the parties had been unable to settle the case and needed more time to negotiate a resolution of the matter prior to trial. Government counsel further advised the Court and Michael Green, Esq., counsel representing Claimants Michael Elliot, Basho Elliot, and Liane Renee Curtiss Elliot, that in an effort to resolve the matter and/or to encourage a settlement, the United States intended to file a motion to strike the claim of Claimant Michael Elliot to reduce the number of claimants. The United States would then file a motion for summary judgment against the remaining claimants, Basho Elliot and his wife, Liane Renee Curtiss Elliot.

4. On April 15, 2008, Judge Kobayashi issued an Amended Rule 16 Scheduling Order, which continued the trial to January 13, 2009, and set an August 13, 2008 deadline to file dispositive motions and a November 14, 2008 discovery cutoff date.

5. In order to narrow the scope of the case, to complete discovery, and to file the contemplated motion for summary judgment within the existing trial schedule, the United States file this ex parte motion to shorten the time for hearing on the Motion to Strike Claimant Michael Elliot's Claim and Answer, which it filed contemporaneously with this ex parte motion.

6. The Motion to Strike Claimant Michael Elliot's Claim and Answer, filed pursuant to Rule G(8)(c) of the Supplemental Rules for Admiralty or Maritime Claims and Asset Forfeiture Actions, seeks an order striking the claim and answer filed by Claimant Michael Elliot for lack of standing, or in the alternative, seeks the entry of a judgment on the pleadings against Claimant Michael Elliot based on his failure to state a claim upon which relief can be granted.

7. As Claimant Michael Elliot's attorney had been notified that the United States intended to file a Motion to Strike Claimant Michael Elliot's Claim and Answer as soon as possible, the United States respectfully requests that the Court set the earliest possible hearing date for the Motion to Strike Claimant Michael Elliot's Claim and Answer.

8. Based on the foregoing, the United States respectfully requests that the Court set the earliest possible hearing date for the Motion to Strike Claimant Michael Elliot's Claim and Answer and an appropriate briefing schedule.

9. Notice of this ex parte motion shall be provided to Claimant Michael Elliot and his attorney.

I declare under the penalty of perjury that the foregoing is true and correct.

Executed on May 9, 2008, at Honolulu, Hawaii.

/s/ Rachel S. Moriyama  
RACHEL S. MORIYAMA